



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB2973

Introduced 2/15/2018, by Sen. Daniel Biss

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Insurance Code. In the provision concerning the Illinois Workers' Compensation Commission Operations Fund surcharge, provides that after the effective date of the amendatory Act, the Director of Insurance shall make a loan of \$10,000,000 to the Illinois Employers Mutual Insurance Company (the Company) from the Illinois Workers' Compensation Commission Operations Fund for the start-up funding and initial capitalization of the Company. Creates the Illinois Employers Mutual Insurance Company Article in the Code and establishes the Company as a nonprofit, independent public corporation. Provides that the Company (1) shall be operated as a domestic mutual insurance company, subject to all applicable provisions of the Code, (2) shall issue insurance for workers' compensation and occupational disease and shall not provide any other type of insurance, (3) shall not be considered a State agency or instrumentality of the State for any purpose, and (4) shall not receive any State appropriations or funds, except for an initial loan or loans. Sets forth provisions concerning a board of directors, ratemaking, the Illinois Insurance Guaranty Fund, a chief executive officer, liability, a workplace safety plan, investments, dividends, the sale of policies, auditing requirements, and an annual report. Effective immediately.

LRB100 16823 SMS 31964 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Section 416, by adding Article XLVI and adding
6 sections 1700, 1705, 1710, 1715, 1720, 1725, 1730, 1735, 1740,
7 1745, 1750, 1755, 1760 and 1765 as follows:

8 (215 ILCS 5/416)

9 Sec. 416. Illinois Workers' Compensation Commission
10 Operations Fund Surcharge.

11 (a) As of July 30, 2004 (the effective date of Public Act
12 93-840), every company licensed or authorized by the Illinois
13 Department of Insurance and insuring employers' liabilities
14 arising under the Workers' Compensation Act or the Workers'
15 Occupational Diseases Act shall remit to the Director a
16 surcharge based upon the annual direct written premium, as
17 reported under Section 136 of this Act, of the company in the
18 manner provided in this Section. Such proceeds shall be
19 deposited into the Illinois Workers' Compensation Commission
20 Operations Fund as established in the Workers' Compensation
21 Act. If a company survives or was formed by a merger,
22 consolidation, reorganization, or reincorporation, the direct
23 written premiums of all companies party to the merger,

1 consolidation, reorganization, or reincorporation shall, for
2 purposes of determining the amount of the fee imposed by this
3 Section, be regarded as those of the surviving or new company.

4 (b)(1) Except as provided in subsection (b)(2) of this
5 Section, beginning on July 30, 2004 (the effective date of
6 Public Act 93-840) and on July 1 of each year thereafter, the
7 Director shall charge an annual Illinois Workers' Compensation
8 Commission Operations Fund Surcharge from every company
9 subject to subsection (a) of this Section equal to 1.01% of its
10 direct written premium for insuring employers' liabilities
11 arising under the Workers' Compensation Act or Workers'
12 Occupational Diseases Act as reported in each company's annual
13 statement filed for the previous year as required by Section
14 136. The Illinois Workers' Compensation Commission Operations
15 Fund Surcharge shall be collected by companies subject to
16 subsection (a) of this Section as a separately stated surcharge
17 on insured employers at the rate of 1.01% of direct written
18 premium. The Illinois Workers' Compensation Commission
19 Operations Fund Surcharge shall not be collected by companies
20 subject to subsection (a) of this Section from any employer
21 that self-insures its liabilities arising under the Workers'
22 Compensation Act or Workers' Occupational Diseases Act,
23 provided that the employer has paid the Illinois Workers'
24 Compensation Commission Operations Fund Fee pursuant to
25 Section 4d of the Workers' Compensation Act. All sums collected
26 by the Department of Insurance under the provisions of this

1 Section shall be paid promptly after the receipt of the same,
2 accompanied by a detailed statement thereof, into the Illinois
3 Workers' Compensation Commission Operations Fund in the State
4 treasury.

5 (b)(2) The surcharge due pursuant to Public Act 93-840
6 shall be collected instead of the surcharge due on July 1, 2004
7 under Public Act 93-32. Payment of the surcharge due under
8 Public Act 93-840 shall discharge the employer's obligations
9 due on July 1, 2004.

10 (c) In addition to the authority specifically granted under
11 Article XXV of this Code, the Director shall have such
12 authority to adopt rules or establish forms as may be
13 reasonably necessary for purposes of enforcing this Section.
14 The Director shall also have authority to defer, waive, or
15 abate the surcharge or any penalties imposed by this Section if
16 in the Director's opinion the company's solvency and ability to
17 meet its insured obligations would be immediately threatened by
18 payment of the surcharge due.

19 (d) When a company fails to pay the full amount of any
20 annual Illinois Workers' Compensation Commission Operations
21 Fund Surcharge of \$100 or more due under this Section, there
22 shall be added to the amount due as a penalty the greater of
23 \$1,000 or an amount equal to 5% of the deficiency for each
24 month or part of a month that the deficiency remains unpaid.

25 (e) The Department of Insurance may enforce the collection
26 of any delinquent payment, penalty, or portion thereof by legal

1 action or in any other manner by which the collection of debts
2 due the State of Illinois may be enforced under the laws of
3 this State.

4 (f) Whenever it appears to the satisfaction of the Director
5 that a company has paid pursuant to this Act an Illinois
6 Workers' Compensation Commission Operations Fund Surcharge in
7 an amount in excess of the amount legally collectable from the
8 company, the Director shall issue a credit memorandum for an
9 amount equal to the amount of such overpayment. A credit
10 memorandum may be applied for the 2-year period from the date
11 of issuance, against the payment of any amount due during that
12 period under the surcharge imposed by this Section or, subject
13 to reasonable rule of the Department of Insurance including
14 requirement of notification, may be assigned to any other
15 company subject to regulation under this Act. Any application
16 of credit memoranda after the period provided for in this
17 Section is void.

18 (g) Annually, the Governor may direct a transfer of up to
19 2% of all moneys collected under this Section to the Insurance
20 Financial Regulation Fund.

21 (h) The Director shall make a loan to the Illinois
22 Employers Mutual Insurance Company of \$10,000,000 from the
23 Illinois Workers' Compensation Commission Operations Fund for
24 the start-up funding and initial capitalization of the Illinois
25 Employers Mutual Insurance Company. The Board of Directors of
26 the Illinois Employers Mutual Insurance Company shall make an

1 application to the Director for the loans, stating the amount
2 to be loaned to the Illinois Employers Mutual Insurance
3 Company. The Illinois Employers Mutual Insurance Company shall
4 repay the loans in full within 5 years after issuance, plus any
5 interest that would have accrued thereon had the loan not
6 occurred.

7 (Source: P.A. 95-331, eff. 8-21-07.)

8 (215 ILCS 5/Art. XLVI heading new)

9 ARTICLE XLVI.

10 THE ILLINOIS EMPLOYERS MUTUAL INSURANCE COMPANY

11 (215 ILCS 5/1700 new)

12 Sec. 1700. Purpose. The purpose of this Article is to
13 establish the Illinois Employers Mutual Insurance Company as a
14 nonprofit, independent public corporation to insure Illinois
15 employers against liability for workers' compensation and
16 occupational disease coverage.

17 (215 ILCS 5/1705 new)

18 Sec. 1705. Definitions. As used in this Article:

19 "Board" means the board of directors of the Illinois
20 Employers Mutual Insurance Company.

21 "Board director" means a member of the board of directors
22 of the Company.

23 "Company" means the Illinois Employers Mutual Insurance

1 Company created by this Article.

2 (215 ILCS 5/1710 new)

3 Sec. 1710. Establishment of the Company.

4 (a) There is hereby created the Illinois Employers Mutual
5 Insurance Company, which shall be a nonprofit, independent
6 public corporation. The Company shall be operated as a domestic
7 mutual insurance company, subject to all applicable provisions
8 of this Code.

9 (b) The Company shall issue insurance for workers'
10 compensation and occupational disease. The Company shall not
11 provide any other type of insurance.

12 (c) The Company shall provide workers' compensation
13 coverage to employers at the highest level of service and
14 savings consistent with reasonable applicable actuarial
15 standards and shall maintain the financial integrity of the
16 Company. The Company shall foster employer involvement in
17 safety initiatives and the creation of workplace safety plans
18 set forth in Section 1740 of this Article.

19 (d) The Company shall not be considered a State agency or
20 instrumentality of the State for any purpose. Employees of the
21 Company are not employees of the State and are not subject to
22 the Personnel Code. The Company shall not receive any State
23 appropriations or funds, except for an initial loan or loans
24 made pursuant to Section 416 of this Code. The State shall not
25 borrow or otherwise appropriate funds from the Company. The

1 Company or its liabilities shall not be deemed to constitute a
2 debt or a liability of the State or a pledge of the full faith
3 and credit of the State.

4 (215 ILCS 5/1715 new)

5 Sec. 1715. Board of directors.

6 (a) The Company shall be managed by a 7-member board of
7 directors. The board of directors shall be appointed by the
8 Governor with the advice and consent of the Senate. For the
9 initial set of appointments, 2 Board directors shall be
10 appointed to a term ending July 1, 2020, 2 Board directors
11 shall be appointed to a term ending July 1, 2021, 2 Board
12 directors shall be appointed to a term ending July 1, 2022, and
13 one Board director shall be appointed to a term ending July 1,
14 2023. All initial appointments shall be made by the Governor
15 within 30 days after the effective date of this amendatory Act
16 of the 100th General Assembly. Thereafter, all appointments or
17 reappointments shall be a for a 5-year term ending on July 1 of
18 the fifth year. The appointment and reappointment of Board
19 directors by the Governor shall be subject to the provisions of
20 Article 3A of the Illinois Governmental Ethics Act.

21 (b) A Board director appointed by the Governor must meet
22 all of the following qualifications:

23 (1) he or she does not have any interest as a
24 stockholder, employee, attorney, agent, broker, or
25 contractor of an insurance entity that writes workers'

1 compensation insurance or whose affiliates write workers'
2 compensation insurance; however, nothing in this Section
3 shall be construed to prohibit an individual who previously
4 had an interest in an insurance entity that writes workers'
5 compensation insurance or whose affiliates write workers'
6 compensation insurance from being appointed to the Board;

7 (2) he or she is not the spouse or an immediate family
8 member living with a person who has an interest as a
9 stockholder, employee, attorney, agent, broker, or
10 contractor of an insurance entity that writes workers'
11 compensation insurance or whose affiliates write workers'
12 compensation insurance; however, nothing in this Section
13 shall be construed to prohibit an individual who previously
14 had an interest in an insurance entity that writes workers'
15 compensation insurance or whose affiliates write workers'
16 compensation insurance from being appointed to the Board;

17 (3) he or she is a resident of the State of Illinois;

18 (4) he or she is of good moral character and has never
19 pleaded guilty to, or been found guilty of, a felony; and

20 (5) he or she is not a registered lobbyist under the
21 Lobbyist Registration Act.

22 (c) The Board directors shall elect a chairman from the
23 Board.

24 (d) The Board is vested with the full power, authority, and
25 jurisdiction over the Company and may perform any necessary or
26 convenient act in the exercise of its power. The Board shall

1 discharge its duties with the care, skill, prudence, and
2 diligence as that of prudent directors acting in a similar
3 enterprise and purpose. The powers of the Board include, but
4 are not limited to:

5 (1) the ability to enter into contracts;

6 (2) the purchase of reinsurance; and

7 (3) the declaration of dividends.

8 (e) The Board shall develop bylaws which shall be subject
9 to the restrictions set forth in this Article. The bylaws shall
10 provide for a schedule of at least quarterly meetings and set
11 forth rules specifically relating to the conduct of meetings
12 and voting procedures.

13 (f) The Board shall reflect the ethnic, cultural, and
14 geographical diversity of the State.

15 (215 ILCS 5/1720 new)

16 Sec. 1720. Ratemaking. The Board shall have full power and
17 authority to establish rates to be charged by the Company for
18 insurance, subject to the applicable provisions of this Code.
19 The Board shall contract for the services of or hire an
20 independent actuary, who is a member in good standing with the
21 American Academy of Actuaries, to develop and recommend
22 actuarially sound rates. Rates shall be set at amounts
23 sufficient, when invested, to carry all claims to maturity,
24 meet the reasonable expenses of conducting the business of the
25 Company, and maintain a reasonable surplus.

1 (215 ILCS 5/1725 new)

2 Sec. 1725. Guaranty fund. The Company shall be subject to
3 Article XXXIV of this Code and shall pay any assessments
4 required for members of the Illinois Insurance Guaranty Fund.

5 (215 ILCS 5/1730 new)

6 Sec. 1730. Chief executive officer.

7 (a) The Board shall hire a chief executive officer who
8 shall serve at the pleasure of the Board. The chief executive
9 officer shall not be a member of the Board and must be
10 qualified by education and experience to manage an organization
11 with financial and operational obligations to policyholders
12 and claimants. The compensation of the chief executive officer
13 shall be determined by the Board.

14 (b) The chief executive officer shall be responsible for
15 conducting the day-to-day operations of the Company, including
16 the hiring of personnel. The chief executive officer shall also
17 maintain an Internet website for the Company, which shall
18 include information regarding the purchase of policies from the
19 Company, as well as any reports required to be published under
20 this Article.

21 (c) The chief executive officer shall present a proposed
22 operating budget for the Company to the Board for its approval
23 on an annual basis. The operating budget shall include a
24 description of administrative and personnel costs.

1 (215 ILCS 5/1735 new)

2 Sec. 1735. Liability. The Board and its employees shall
3 not be personally liable for acts performed in good faith,
4 without the intent to defraud, and made in an official
5 capacity.

6 (215 ILCS 5/1740 new)

7 Sec. 1740. Workplace safety plan.

8 (a) The chief executive officer shall formulate,
9 implement, and monitor a workplace safety plan for all
10 policyholders. This plan shall include written guidance to
11 reduce workplace accidents, prevent injuries, and promote safe
12 working conditions. Each plan shall have clearly stated safety
13 objectives for the policyholder.

14 (b) Employees of the Company shall have access to the
15 premises of any policyholder for the purpose of examining the
16 safety conditions of the workplace. The Company may terminate a
17 policy if there is a refusal by the policyholder to permit
18 on-site examinations by the Company or if the policyholder
19 disregards or fails to comply with the safety objectives set
20 forth by the Company in the workplace safety plan.

21 (215 ILCS 5/1745 new)

22 Sec. 1745. Investments.

23 (a) The Company shall formulate and adopt an investment

1 policy that safeguards the value of all assets and maximizes
2 investment potential. All investments by the Company shall be
3 subject to the applicable restrictions for domestic mutual
4 insurers set forth in this Code.

5 (b) The Company may retain an independent investment
6 counsel who shall be subject to standards applicable to
7 fiduciaries responsible for safeguarding the assets of a
8 corporation.

9 (215 ILCS 5/1750 new)

10 Sec. 1750. Dividends.

11 (a) The Company may declare a dividend in accordance with
12 the requirements set forth in this Code.

13 (b) Dividends may be distributed in the form of premium
14 discounts, dividends, or a combination of dividends and
15 discounts.

16 (c) In addition to any requirements for dividends set forth
17 in this Code, dividends may only be distributed if:

18 (1) the initial funding of the Company has been repaid
19 in full;

20 (2) an independent actuarial report of the prior year's
21 operations has been completed and reviewed by the Board;

22 (3) the Company has met all expenses for administration
23 and claims for the prior year; and

24 (4) adequate reserves exist to pay all claims.

1 (215 ILCS 5/1755 new)

2 Sec. 1755. Sale of policies. The Company shall administer
3 the sale of policies for workers' compensation and occupational
4 disease coverage. The Company shall utilize the Internet and
5 other technologies to the greatest extent possible in order to
6 facilitate the purchase of a policy for employers in this
7 State.

8 (215 ILCS 5/1760 new)

9 Sec. 1760. Auditing requirements.

10 (a) The Company shall be subject to all examinations and
11 audits required under this Code.

12 (b) The Board shall retain a competent and independent firm
13 of certified public accountants to perform an annual audit of
14 the performance and management of the Company and an audit of
15 the accounts, funds, and securities of the Company. The costs
16 of these audits shall be paid for by the Company. The audits
17 shall be published on the Company's Internet website.

18 (215 ILCS 5/1765 new)

19 Sec. 1765. Annual report.

20 (a) On July 1, 2019, the Board shall prepare and submit a
21 report to the Governor, the President of the Senate, the
22 Minority Leader of the Senate, the Speaker of the House, and
23 the Minority Leader of the House. This report shall describe
24 the progress of the Company to date in establishing its

1 operations as a domestic mutual insurance company in this State
2 providing workers' compensation and occupational disease
3 coverage. This report shall include the information required in
4 subsection (b) of this Section, if available.

5 (b) Beginning July 1, 2020 and continuing every July 1
6 thereafter, the Board shall prepare and submit a report to the
7 Governor, the President of the Senate, the Minority Leader of
8 the Senate, the Speaker of the House, and the Minority Leader
9 of the House. This report shall contain, at a minimum, the
10 following information:

11 (1) a summary of the most recent audits performed
12 pursuant to Section 1760 of this Code;

13 (2) statistical and actuarial data related to the
14 determination of premium rate levels; and

15 (3) the incidence of work-related injuries and costs
16 related to those injuries.

17 (c) The reports required under this Section shall be
18 submitted electronically and posted on the Internet website of
19 the Company.

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 215 ILCS 5/416

4 215 ILCS 5/Art. XLVI

5 heading new

6 215 ILCS 5/1700 new

7 215 ILCS 5/1705 new

8 215 ILCS 5/1710 new

9 215 ILCS 5/1715 new

10 215 ILCS 5/1720 new

11 215 ILCS 5/1725 new

12 215 ILCS 5/1730 new

13 215 ILCS 5/1735 new

14 215 ILCS 5/1740 new

15 215 ILCS 5/1745 new

16 215 ILCS 5/1750 new

17 215 ILCS 5/1755 new

18 215 ILCS 5/1760 new

19 215 ILCS 5/1765 new